IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-15-12-2005

Coram:-
The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Writ Petition Nos. 18751 to 18755 of 2003

State of Tamil Nadu,
represented by its Secretary to
Government,
Finance Department,
Fort St. George, Chennai-9.

.. Petitioner in all the W.Ps.

Vs.

1.The Tamil Nadu Secretariat
Retired Officials Association
through its Secretary,
M. Rathnasamy.

2.The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai-104.

.. Respondents in W.P.No.18751/2003.

1. Tamil Nadu Retired Officials
Association through its
General Secretary, D.P.I.Complex,
College Road, Chennai-6.

2. The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai-104.

.. Respondents in W.P.No. 18752/2003.

1. Tamil Nadu Retired Officials'
Association through its
General Secretary L. Ramasami,
D.P.I. Complex, College Road, Chennai-6.

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2. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai-104.

3. B.K. Govindan,
   No.12, Maruthi Nagar, Chinna Tirupathi post,
   Kannan Kurichi Road, Salem-8.
   (R-3 was impleaded as per order of this
    Court dated 22-2-2005 in WPMP No.11897/2004)

.. Respondents in W.P.No. 18753/2003.

1. Tamil Nadu Retired Officials'
   Association through its
   General Secretary N. Subramaniam,
   D.P.I. Complex, College Road, Chennai-6.

2. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai-104.

3.B.K. Govindan, No.12, Maruthi Nagar,
  Chinna Thirupathi Post, Kannan Kurichi Road,
  Salem-8.
  (R-3 was impleaded as per order of this
    Court dated 22-2-2005 in WPMP No.11898/2004)

.. Respondents in W.P.No.18754/2003.

1. Tamil Nadu Retired Officials'
   Association through its
   General Secretary M. Rathnasamy,
   No.70, Medavakkam Tank Road, Kilpauk,
   Chennai-10.

2. The Registrar,
   Tamil Nadu Administrative Tribunal,
   Chennai-104.

3. B.K. Govindan, No.12, Maruthi Nagar,
  Chinna Thirupathi Post, Kannan Kurichi Road,
  Salem-8.
  (R-3 was impleaded as per order of this
    Court dated 22-2-2005 in WPMP No.12899/2004).

.. Respondents in W.P.No. 18755/2003.

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Writ Petitions filed under Article 226 of the Constitution of India to issue Writs of Certiorari, to call for records pertaining to the (i) order dated 11-4-2001 made in O.A.No. 7224/1998; (ii) order dated 11-4-2001 in O.A.No.7630/98;(iii) order dated 11-12-2002 made in R.A.No.71/2002 in O.A.No.7630/98;(iv) order dated 11-12-2002 made in C.A.No.23/2002 in O.A.No.7630/1998; and (v)order dated 11-12-2002 made in C.A.76/2002 made in O.A.No.7224/1998 respectively on the file of Tamil Nadu Administrative Tribunal, Chennai and quash the same.

Mr. A.L. Somayaji, Addl. Advocate General assisted by Mr. D. Krishnakumar, Special Govt., Pleader for petitioner in all the W.Ps.

Mr. R. Muthukannu for R-1 in W.P.Nos. 18751, 18755/2003.

Mr. S.M. Subramanian for R1 in W.P.Nos. 18752 to 18754/2003.

Mr. M.M. Sundaresh for R3 in W.P.Nos. 18753 to 18755/2003.

COMMON ORDER

(Order of Court was made by P. Sathasivam, J.,)

Since the issue raised in all the writ petitions is one and the same, they are being disposed of by the following common order.

2. The petitioner in all the Writ Petitions is the State of Tamil Nadu represented by Finance Department. Tamil Nadu Secretariat Retired Officials Association through its Secretary-Mr. M. Rathnasamy filed Original Application No. 7224 of 1998 before the Tamil Nadu Administrative Tribunal praying for the following relief:

"To call for the records of the respondent relating to G.O.Ms.No. 271 Finance (Pension) Department, dated 15-6-1998 and to direct the respondent to issue an amendment to paragraphs 4 and 5 of the said G.O. extending the benefit to all pensioners/family pensioners who retired/died after 1-6-1960 till 31-5-1988; and to direct the respondent to regulate and revise pension and family pension of all the members/pensioners of the Applicant Association to compute and refix their revised pension with effect from 1-6-1988 and

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direct the respondent to pay them the arrears of pension and granting from 1-6-88 within a time limit as framed by the Tribunal as many of the pensioners of the Applicant Association have reached the age of 70 and above."

3. Tamil Nadu Retired Officials Association through its General Secretary, Chennai-6 has filed O.A.No. 7630 of 98 before the same Tribunal praying to issue direction to the respondent/Government, to implement the order dated 6-5-96 passed by the Tribunal in O.A.1919/91 and extend the benefit of revised pension by issuing necessary orders, that in respect of the identically placed pensioners and family pensioners of the Tamil Nadu who retired/died after 1-6-1960 till 31-5-88 and whose pension/family pension plus D.A. at 608 points p.m. does not exceed Rs.500/-p.m. shall be refixed with effect from 1-6-88 by increasing the sum total of basic pension and the related D.A. at 608 points with 60% and whose pension/family pension/family pension plus D.A. at 608 points exceed Rs.500/-p.m. shall be refixed with effect from 1-6-88 by increasing the sum total of basic pension and related D.A. at 608 points with 50% and directing the respondent to pay them the arrears within a time frame.

4. By common order dated 11-04-2001, the Administrative Tribunal disposed of both the Original Applications, namely, O.A.Nos.7224 and 7630 of 1998 and allowed the same and directed the respondent, namely, Government of Tamil Nadu-Finance Department to implement the order passed by the Tribunal in O.A.No. 1919 of 1991 dated 6-5-1996 and extend the benefit of revised pension by issuing necessary orders to the members of the applicants' Association. Besides the direction, the Tribunal has also directed the Finance Department to pay arrears due to the applicants within a period of six months from the date of receipt of a copy of the said order. Questioning the said common order, the Finance Department has filed Writ Petition Nos. 18751 and 18752/2003.

5. Aggrieved by the order in O.A.Nos.7224/98 and 7630/98, the Finance Department filed Review Application Nos. 71 and 76 of 2001 respectively. For the non-implementation of the said order, the applicant in O.A.No.7630/1998 namely, Tamil Nadu Retired Officials Association, Chennai filed Contempt Application No. 23/2002 under Section 20 of the Contempts of Courts Act. For the same reason, the Tamil Nadu Secretariat Retired Officials Association filed Contempt Application No. 76/2002 in O.A.No. 7224/98.

6. By common order dated 11-12-2002, Tamil Nadu Administrative Tribunal dismissed the Review Application (R.A.No.71/2002)as not maintainable. After finding that the Government has not revised the salary, calculated the arrears and paid the amounts to the member of the applicant Association and

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also taking note of the fact that it has dismissed the Review Application, directed the Finance Department to implement the order within a period of two months and closed the Contempt Applications. Questioning the dismissal of the Review Application (R.A.No.71/2002), Finance Department has filed Writ Petition No. 18753/2003 and against the order in Contempt Applications 23 and 76/2002, the same Department has filed Writ Petition Nos. 18754 and 18755/2003.

7. The case of the Retired Officers/Pensioners are briefly stated hereunder:

The members of the Tamil Nadu Secretariat Retired Officials Association having rendered thorough and satisfactory service, they are drawing pension admissible and admitted by the Government in their various posts. They formed a homogenous class of State Government pensioners. On the recommendation of the Fifth Tamil Nadu Pay Commission, the Government in their order in G.O.Ms.No. 810 Finance (PC) Department dated 9-8-1989 have issued orders inter alia revising the pension/family pension of the pensioners and family pensioners who retired/died prior to 1-6-1960 by allowing increase of 60% of total pension/family pension after merger of D.A at 608 points for those drawing pension upto Rs.500/- and 50% increase for those drawing pension above Rs.500/- p.m.

8. Ambasamudram Taluk Pensioners Association, a section of Tamail Nadu Pensioners' Association, challenged the above order in G.O.Ms.No. 810 Finance (PC) Department dated 9-8-89 in O.A.No. 1919/91 contending as follows:

i) The State Government Pensioners are divided into various categories and different rates of percentage increases are given to different categories. The revised formula for computation of pension is against Article 14 of the Constitution.

ii) For such classification no nexus or reasons are shown as to how the cut off dates were arrived at:

iii) Pension is not a bounty or gratuitous payment but deferred payment of wages claimable as property right.

iv) The classification is arbitrary. Hence, classifications found in clause 2 (ii) and (iii) of the impugned G.O., are liable to be set aside.

v) The rulings of the Tribunal, High Courts and Supreme Court on giving benefits of revised pension are applicable uniformly to all pensioners similarly circumstanced and identically situated.

9. The Tribunal after considering the claim of the applicants and the stand taken by the Finance Department in their counter, accepted the case of the applicants. The relevant portion of the order is in the following:

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"We set aside the G.O.Ms.No. 810 Finance (Pay Commission) Department, dated 9-8-1989 in so far as it affects the applicant's Association and direct the respondent to extend the benefits of 60% increase in the pre-revised pension plus the Dearness allowance at 608 points available to those who retired prior to 1-6-60 to those pensioners and family pensioners of cases of retirement or death occurring after 1-6-60."

When the Government of Tamil Nadu preferred an appeal by way of Special Leave Petition before the Supreme Court, the Supreme Court dismissed the S.L.P. on 1-12-1997 pointing out that the orders of the Tribunal based on the facts of the case did not call for interference.

10. The Government while implementing the said order, issued G.O.Ms.No. 271 Finance (Pension) Department, dated 15-6-1998 on the verdict of the Tribunal, restricted the benefits of the orders of the Tribunal in O.A.No. 1919/1991 only to the pensioner members of the Ambasamudram Taluk Pensioners' Association. The members of the Tamil Nadu Secretariat Retired Officials' Association also belong to the same homogenous class of State Government Pensioners and their case is on par with the members of the Ambasamudram Taluk Pensioners in all respects. It is also their claim that the benefit ordered by the Tribunal and sanctioned by the Government in G.O.Ms.No. 271 Finance, dated 18-6-98 should equally be made applicable to the members of the applicant Association also.

11. The Finance Department filed a reply affidavit highlighting their stand. They explained that the reason for dividing into 4 categories and the intention in fixing the cut-off date in classifying the pensioners who retired after the implementation of Pay Commission recommendation is that persons who retired after the implementation of pay commission recommendation would have derived increase pay thereby would have drawn higher rate of pension compared to those who retired prior to implementation of Pay Commission recommendations. They also contended that the Government Order is not arbitrary and fixing of a cut off date for entry as for benefits to employees/pensioners is not violative of Article 14 of Constitution.

12. In O.A.No. 7630/98 Tamil Nadu Retired Officials' Association also prayed similar relief as granted in O.A.No. 1919/91. Here again, the Finance Department filed a counter reiterating their earlier stand.

13. By common order dated 11-04-2001, the Tribunal, after finding that the applicants are similarly placed persons

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covered by the earlier order of the Tribunal in O.A.No. 1919/91 dated 6-5-1996 which is squarely applicable to these Original Applications and considering the fact that the said order has been confirmed by the Supreme Court, and that the Government have also implemented the same, issued similar directions for implementing the order in O.A.No. 1919/91 by extending the benefit of revised pension by issuing necessary orders to the members of the applicant Association.

14. In the Review Application, the Finance Department have once again reiterated their earlier stand and justified the division of 5 categories. It is also contended in the Review Application that it is not always possible to explain the same benefit to one and all, irrespective of the dates of the superannuation. They also raised an objection that if the request of the applicants are accepted, it would be a financial burden for the State Government.

15. As said earlier, since the Department has not complied with the order, both the Associations again approached the Tribunal by way of contempt petitions for punishing the Department. After having satisfied that there is no ground for review and without punishing the respondents, the Tribunal extended the time for a further period of two months for compliance of the earlier order.

16. Questioning these orders, as said earlier, Finance Department has filed the above Writ Petitions.

17. Heard Mr. A.L. Somayaji, learned Advocate General for the writ petitioners; Messrs. R. Muthukannu, S.M. Subramanian and M.M. Sundaresh for contesting respondents/pensioners/their Associations.

18. Now the points for consideration in these writ petitions are,

(i) whether the Tribunal is justified in extending the benefits to the applicants by directing the Finance Department to implement the order passed by the Tribunal in O.A.No. 1919/91 dated 6-5-96 and apply the benefit of revised pension by issuing necessary orders to the applicants Association?

(ii) Is there any merit in the contention of the department; and

(iii) Whether the common order of the Tribunal in the Original Applications and the Review Applications as well as Contempt Applications called for interference of this Court in these writ petitions?

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19. The main ground upon which the Tribunal has accepted the claim of the petitioners-pensioners is that in respect of similarly placed persons, based on the orders of the Tribunal, in the case of Ambasamudram Taluk Pensioners' Association, implemented the direction for payment of pension as claimed. On the other hand, the stand of the State Government is that taking into account the financial burden, the Government has power to fix different dates and dividing the pensioners into four categories and also in fixing different cut off date. It is also the claim of the State Government that since the persons retired after the implementation of the pay commission recommendations, would have derived increase pay thereby would have drawn higher rate of pension compared to those who retired prior to implementation of Pay Commission recommendations, they are justified in fixing different categories and cut off dates.

20. The issue in these cases referred to the claim of the pensioners i.e., to extend the benefits of the order of the Tamil Nadu Administrative Tribunal in O.A.No. 1919 of 91 dated 6-5-96 filed by Ambasamudram Pensioners' Association, Cheranmahadevi to the petitioners also. The said decision in O.A.No. 1919 of 91 was upheld by the Supreme Court in S.L.P.No. 23643 of 1997 dated 1-12-1997 and the Review Petition filed by the State was dismissed on 31-3-1998. It is not in dispute that thereafter the said order of the Tribunal dated 6-5-96 was implemented by the Government-vide G.O.Ms.No. 271, Finance (P.C) Department dated 15-6-1998 in respect of the members of the Ambasamudram Pensioners' Association alone.

21. It is also not in dispute that the pensioners who had served in the Judicial Department, unable to move the Tribunal, filed Writ Petition No. 15473 of 1999 praying the relief in line with the orders of the Tamil Nadu Administrative Tribunal in O.A.No. 1919 of 1991 dated 6-5-96 which was allowed by the Division Bench of this Court on 25-3-2004 giving direction to the respondents namely, Secretary, Finance Department, Government of Tamil Nadu to extend the same benefits to the petitioners in the said writ petition, as were extended by the Tribunal by judgement dated 6-5-96 in O.A.No. 1919 of 91. The decision of the Division Bench in Writ Petition No. 15473 of 1999 dated 25-3-2004 has been implemented by the Government in G.O.Ms.No. 504, Finance (Pension) Department dated 21-9-2004.

22. It was also brought to our notice that several writ petitions filed before this Court seeking the benefit of the order in O.A.No.1919/91 and was also implemented in G.O.Ms.No. 271, Finance (P.C) Department dated 15-6-1998 were allowed at the admission stage itself and those orders have been implemented by the Government.

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23. A Constitution Bench of the Supreme Court in D.S. Nakara v. Union of India, reported in AIR 1983 Supreme Court 130, considered the following questions: (para 2)

> "2. Do pensioners entitled to receive superannuation or retiring pension under Central Civil Services (Pension) Rules, 1972 form a class as a whole? Is the date of retirement a relevant consideration for eligibility when a revised formula for computation of pension is ushered in and made effective from a specified date? Would differential treatment to pensioners related to the date of retirement qua the revised formula for computation of pension attract Art.14 of the Constitution and the element of discrimination liable to be declared unconstitutional as being violative of Art.14?..."

After discussion, the Bench has concluded: (para 65)

> "65. That is the end of the journey. With the expanding horizons of socio-economic justice, the socialist Republic and welfare State which we endeavour to set up and largely influenced by the fact that the old men who retired when emoluments were comparatively low and are exposed to vagaries of continuously rising prices, the falling value of the rupee consequent upon inflationary inputs, we are satisfied that by introducing an arbitrary eligibility criteria; 'being in service and retiring subsequent to the specified date' for being eligible for the liberalised pension scheme and thereby dividing a homogeneous class, the classification being not based on any discernible rational principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalised pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalised pension scheme of 'being in service on the specified date and retiring subsequent to that date' in impugned memoranda. Exhibits P-1 and P-2, violates Article 14 and is unconstitutional and is struck down...."

Mr. A.L. Somayaji, learned Additional Advocate General by pointing out various subsequent decisions, placed his contention that it would be open to the Government to fix different cut off date depending on the financial resources available with the Government. For that contention, he based reliance on the decision of the Supreme Court in Union of India v. P.N. Menon, reported in (1994) 4 Supreme Court Cases 68 wherein Their Lordships after referring to the decision in D.S. Nakara's case (supra), held that "Whenever a revision takes place, a cut-off date becomes imperative because the

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benefit has to be allowed within the financial resources available with the Government.

24. In State of Rajasthan v. Amrit Lal Gandhi, reported in (1997) 2 Supreme Court Cases 342, the Government had stated that the justification of the cut-off date of 1-1-90 was "wholly economic". While accepting the said contention, the Court held that "it cannot be said that paying capacity is not a relevant or valid consideration while fixing the cut-off date".

25. In Union of India v. Lieut (Mrs.) E. Iacats, reported in (1997) 7 Supreme Court Cases 334, while considering the choice of date, the Supreme Court, after referring to D.S. Nakara's case (supra) has held: (para 4)

> "4....This decision has been subsequently explained and distinguished in a number of cases. In the case of Sushma Sharma (Dr) v. State of Rajasthan [1985 Supp SCC 45:AIR 1985 SC 1367] (AIR at p.1379) this Court cited with approval its earlier observations in Union of India v. Parameswaran Match Works Ltd (1975) 1 SCC 305: AIR 1974 SC 2349) to the effect that the choice of a date as a basis of classification cannot always be dubbed as arbitrary unless it is capricious or whimsical...."

26. It has been held in Tamil Nadu Electricity Board v. R. Veerasamy, reported in (1993) 3 Supreme Court Cases 414 that financial constraints is a relevant material and valid reason for introducing the pension scheme prospectively. The Supreme Court, after referring to various decisions on this issue, has concluded that there is no arbitrariness in fixing different dates considering the financial resources of the Electricity Board.

27. The above decisions relied on by the learned Additional Advocate General make it clear that the Government is well within its power in fixing cut-off date while implementing the new pension scheme depending on the financial resources. If we apply the said principle strictly, the impugned order of the Tribunal cannot be sustained. In this regard, it will be useful to refer the judgement of the Supreme Court in Subrata Sen v. Union of India, reported in AIR 2001 Supreme Court 3634. The conclusion arrived at therein is in the following manner: (paras 16, 17, 18 and 19)

> "16....The rules for grant of pension provide that an employee mentioned in specified category shall automatically be member of pension fund and is entitled to get pension on the date of his retirement. Amount of pension is to be determined as per the Rules. That Rule is modified and the petitioners seek relief on the basis

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of the amended rule on the ground that there cannot be any discrimination between the employees who retired prior to or after a particular date, as held in Nakara's case which is followed by this Court in various decisions including V. Kasturi's case (AIR 1999 SC 81). Further, there is no question of pensioners (retired employees) dividing the pension fund and or payment of pension to be made only from the pension fund. The liability to pay pension arises because of provision made in the rules. In this view of the matter, the decision in Sasadhar Chakravarty [1997 AIR SCW 93: AIR 1997 SC 336] would have no bearing.

17. Further, in All India Reserve Bank Retired Officers Association v. Union of India, 1992 Supp (1) SCC 661, Ahmadi, J. (as he then was) speaking for the Court in the aforesaid decision highlighted the observations in Nakara's case found at p.333, para 46 to the following effect:

"...the pension will have to be recomputed in the light of the formula enacted in the liberalised pension scheme and effective from the date the revised scheme comes into force. And beware that it is not a new scheme. It is not a new retiral benefit. It is an upward revision of an existing benefit. If it was a wholly new concept, a new retiral benefit, one could have appreciated an argument that those who had already retired could not expect it."

The Court further observed:-

"...It must be realised that in the case of an employee governed by the CPF (Contributory Provident Fund) Scheme his relations with the employer come to an end on his retirement and receipt of the CPF amount but in the case of an employee governed under the pension scheme his relations with the employer merely undergo a change but do not snap altogether. That is the reason why this Court in Nakara case drew a distinction between liberalisation of an existing benefit and introduction of a totally new scheme. In the case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the pension amount but that is not the case of employees governed under the CPF scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends. This distinction between those belonging to the pension scheme and those belonging to the CPF scheme has been rightly emphasised by this Court in Krishna's case (AIR 1990 SC 1782)."

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> 18. Same is the position in the present case. As observed in the aforesaid case, in case of an employee governed under the Pension Scheme, relations with the employer merely undergo a change, but are not snapped altogether. There is no new scheme of payment of pension, but it is only a revision of the existing pension scheme. Under the new Pension Scheme, pension is required to be paid on the basis of 40 per cent of the average of the last 10 months salary including average dearness allowance drawn by the officer over the last 10 months of his service instead of earlier 40 per cent, of the average annual basic salary for the last five years of service immediately preceding the date of retirement.
>
> 19. In view of the aforesaid legal position, this petition is required to be partly allowed and the respondents are directed to give pensionary benefits to the petitioners on the basis of notification dated 10th March, 1995 by deleting the words "retiring from December, 1994 onwards" from the said notification. The writ petition stands disposed of accordingly..."

The above judgment of the Supreme Court applies in all fours to the cases on hand. Apart from this, the position in the present cases is altogether different as that of the cases cited by the learned Additional Advocate General. We have already referred to the order of the Tribunal in O.A.No. 1919 of 91 dated 6-5-96, which was upheld by the Supreme Court and the Review Petition filed by the State was also dismissed. It is also not in dispute that the Government of Tamil Nadu implemented the said order in favour of Ambasamudram pensioners' Association. We have also referred to the decision of the Division Bench of this Court in Writ Petition No. 15473 of 1999 dated 25-3-2004, passed in the case of Pensioners who had served in the Judicial Department and the said order was also implemented by the Government. We have also referred to the various individual orders passed by this Court, and the acceptance by the Government by implementing the same. Considering the peculiar circumstances of these cases, the various orders passed by the Tribunal, and this Court as well as the Apex Court and the implementation of the same by the Government in having accepted the same, we are inclined to confirm the order of the Tribunal. It was submitted before us that it was reported before the Tribunal when it passed orders even in 2000-2001 that most of the pensioners either dead or crossed the age of 70 or 75 years. Now a further period of 4 years has lapsed. Even during the course of argument before us, learned counsel appearing for the respondent-pensioners submitted that most of the pensioners are not alive and few of them are more than 80. Taking note of these special circumstances and the other materials namely, various earlier orders of the

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Tribunal/High Court/Supreme Court as well as the implementation of those orders by the Government, though the stand of the Government as projected to by the learned Additional Advocate General is acceptable, we are not inclined to disturb the conclusion arrived at by the Tribunal at this stage. It is made clear that in view of the peculiar circumstances of these cases, this finding of this Court cannot be cited as a precedent to other cases. With the above observation, these Writ Petitions are dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

R.B.

To:-

1. The Secretary to Government,
Finance Department Fort. St. George,
Chennai-9.

2. The Registrar,
Tamilnadu Administrative Tribunal,
Chennai-104

4 cc to Mr.R. Muthukannu, Advocate, Sr. 49251, 49250
3 ccs to Mr.s.M. Subramaniam, Advocate, Sr. 49377
1 cc to Govt. Pleader, SR. 49278
1 cc to Mr.M.M. Sundresh, Advocate, Sr. 49730

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